



NAILAH K. BYRD
CUYAHOGA COUNTY CLERK OF COURTS
1200 Ontario Street
Cleveland, Ohio 44113

Court of Common Pleas

New Case Electronically Filed: COMPLAINT
July 31, 2020 16:19

By: MATTHEW L. ALDEN 0065178

Confirmation Nbr. 2042551

JAMES P. KERR

CV 20 935456

vs.

NATIONAL FUNDING, INC.

Judge: TIMOTHY MCCORMICK

Pages Filed: 8

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO
CIVIL DIVISION

James P. Kerr)	Case No.:
2511 North Avenue)	
Parma, Ohio 44134,)	Judge:
)	
Plaintiff,)	
)	Complaint For Money Damages And
v.)	Injunctive Relief
)	
National Funding, Inc.)	Jury Demand Endorsed Hereon
c/o David Gilbert s/a)	
9820 Town Centre Drive)	
San Diego, California 92121,)	
)	
Defendant.)	
)	
)	

For his Complaint against the Defendant, National Funding, Inc., Plaintiff James P. Kerr ("Mr. Kerr") states as follows:

Preliminary Statement

1. This is an action for actual, statutory and punitive damages brought by Mr. Kerr against National Funding, Inc. for its willful and knowing violation of the Fair Credit Reporting Act in connection with its unlawful accessing of Mr. Kerr's credit information during the pendency of his bankruptcy case.

Jurisdiction And Venue

2. This Court has jurisdiction over this matter pursuant to 15 U.S.C. § 1681p. Venue in this county is proper because National Funding, Inc. transacts business in this county and part of the conduct complained of occurred in this county.

Parties

3. Mr. Kerr is an adult individual presently residing Parma, Ohio.

4. National Funding, Inc. has its principal place of business in San Diego, California.

5. For the purposes of this complaint, unless otherwise indicated, “National Funding, Inc.” means all agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers of National Funding, Inc.

Background

6. Mr. Kerr is an individual and a “consumer” as defined by the Fair Credit Reporting Act, 15 U.S.C. 1681a(c).

7. National Funding, Inc. is a corporation that regularly extends credit to debtors. National Funding, Inc. grants debtors the right to defer payment of debt.

8. On December 3, 2019, in the Northern District of Ohio Bankruptcy Court’s Cleveland Division, Kerr and his wife filed for personal Chapter 7 bankruptcy.

9. The case was styled as *In re James P. Kerr & Candace J. Kerr*, Case No. 19-17355. A copy notice of filing is attached to this Complaint as Exhibit 1, Page 1.

10. The filing of a bankruptcy petition such as Mr. Kerr’s under 11 U.S.C. §301 operates immediately as a stay applicable universally of any act to collect or assess any debt owed by him prior to the filing of his bankruptcy case.

11. Upon the filing of his bankruptcy case on December 3, 2019, Mr. Kerr’s creditors and all debt collectors acting on behalf of his creditors were immediately subject to the automatic stay provisions of 11 U.S.C. §362(a)(6).

12. National Funding, Inc. had actual knowledge that Kerr had filed for personal bankruptcy and that all collection activity was stayed against him.

13. On January 28, 2020, National Funding, Inc. filed a proof of claim in Kerr's bankruptcy case. Only creditors listed in a person's bankruptcy receive notice from the bankruptcy court to file claims.

14. National Funding, Inc. thus had actual knowledge that Kerr had filed for Chapter 7 bankruptcy.

15. National Funding, Inc. never filed a motion to lift the automatic stay in Kerr's bankruptcy case.

16. National Funding, Inc. never objected to Kerr receiving a discharge of the debt owed to National Funding, Inc.

17. As of December 3, 2019, National Funding, Inc. had no permissible basis or court permission to access Mr. Kerr's credit reports or to conduct any collection activity with respect to him without first obtaining the permission of the Bankruptcy Court adjudicating Mr. Kerr's bankruptcy proceeding.

18. Despite the fact that Mr. Kerr was protected by the bankruptcy stay as of December 3, 2019, on January 13, 2020, National Funding, Inc. accessed the personal and confidential information contained in Mr. Kerr's Equifax account without any permissible purpose and without Mr. Kerr's knowledge or consent for debt collection purposes.

19. Mr. Kerr had no reason to suspect that National Funding, Inc. had illegally pulled his personal and confidential Equifax credit report until he obtained a copy of his Equifax Credit report dated July 28, 2020, which disclosed the illegal pull and collection activity that occurred on January 13, 2020.

20. A true and accurate copy of the relevant portion of Mr. Kerr's July 28, 2020 Equifax credit report is attached as Exhibit 1, Page 2.

21. Upon information and belief, on January 13, 2020, National Funding, Inc. willfully and falsely represented to Equifax that it had a permissible purpose, debt collection or account review, as the basis for its request for Mr. Kerr's personal and confidential credit information.

22. Mr. Kerr received a discharge of all the debt listed on Schedule E/F of his bankruptcy petition, including any debt that National Funding, Inc. was attempting to collect.

23. Mr. Kerr has not requested credit from or otherwise initiated any business relationship with National Funding, Inc. at any time subsequent to his bankruptcy filing and discharge.

24. After a reasonable time to conduct discovery, Mr. Kerr believes he can prove that all actions taken by National Funding, Inc. as described in this complaint were taken willfully to invade his privacy without justification and with reckless disregard for Plaintiff's rights.

25. Mr. Kerr reasonably fears that, absent this Court's intervention, National Funding, Inc. will:

- a. continue to illegally access his personal, private and financial information;
- b. ultimately attempt to seek payment from him on a discharged debt; and
- c. ultimately cause harm to his credit or otherwise harm him economically.

26. Because of the actions taken by National Funding, Inc. in conducting collection activity in violation of the automatic bankruptcy stay that lacked any legitimate purpose, Mr. Kerr was forced to hire an attorney and his damages include reasonable attorney fees incurred in pre-suit representation and prosecuting this case.

Claim For Relief: Willful Violation of 15 U.S.C. §1681b

27. All prior paragraphs are incorporated into this claim by reference.

28. National Funding, Inc. is a furnisher and user of consumer credit information.

29. Upon information and belief, on January 13, 2020, National Funding, Inc. knowingly and

willfully requested and obtained Mr. Kerr's consumer report from Equifax despite having actual knowledge that Mr. Kerr was protected by the bankruptcy stay as of December 3, 2019.

30. National Funding, Inc. lacked any permissible purpose as required by 11 U.S.C. §1681b in conducting "account reviews" or in obtaining Mr. Kerr's personal credit information after he filed for bankruptcy.

31. National Funding, Inc. knowingly and willfully obtained Mr. Kerr's information from Equifax under false pretenses.

32. As a direct and proximate result of National Funding, Inc.'s violations of the Fair Credit Reporting Act, Plaintiff has suffered and will continue to suffer considerable harm and injury including, but not limited to, mental distress and emotional anguish stemming from the ongoing invasion of his privacy, entitling Plaintiff to an award of actual damages in an amount to be proven at trial, plus attorneys' fees together with the costs of this action pursuant to 15 U.S.C. § 1681n.

33. Additionally, the harm suffered by Mr. Kerr is attended by circumstances of fraud and willful misconduct, entitling Plaintiff to punitive damages pursuant to 15 U.S.C. § 1681n(a)(2).

Prayer for Relief

Wherefore, Plaintiff James P. Kerr prays for judgment against Defendant National Funding, Inc. as follows:

1. An award of actual damages in such amounts to be proved at trial in excess of \$25,000.00, pursuant to 15 U.S.C. §§ 1681n(a)(1);
2. An award of statutory damages pursuant to 15 U.S.C. § 1681n(a)(1);
3. An award of punitive damages, in excess of \$25,000.00, pursuant to 15 U.S.C. § 1681n(a)(2);

4. For pre-judgment and post-judgment interest;
5. Costs and reasonable attorneys' fees pursuant to 15 U.S.C. §§ 1681n(a)(3); and
6. All other legal or equitable relief to which Plaintiff may be entitled.

Demand For A Jury Trial

Pursuant to Oh. R. Civ. P. 38, Plaintiff demands a trial by jury on all issues of fact.

Respectfully submitted,

/s/ Matthew L. Alden

Matthew L. Alden (0065178)

Patrick D. Miller (0088408)

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Counsel for Plaintiff James P. Kerr

United States Bankruptcy Court
Northern District of Ohio

Notice of Bankruptcy Case Filing

A bankruptcy case concerning the debtor(s) listed below was filed under Chapter 7 of the United States Bankruptcy Code, entered on 12/03/2019 at 09:49 AM and filed on 12/03/2019.

FILED
12/03/2019
09:49 AM

James P. Kerr

2511 North Avenue
Parma, OH 44134
SSN / ITIN: xxx-xx-0107

Candace J. Kerr

2511 North Avenue
Parma, OH 44134
SSN / ITIN: xxx-xx-0787

The case was filed by the debtor's attorney: The bankruptcy trustee is:

Keith L. Borders

3401 Enterprise Parkway
Suite 340
Beachwood, OH 44122
216-766-5704

Robert D. Barr

Chapter 7 Trustee
1111 Superior Avenue East Suite 2500
Cleveland, OH 44114
(216) 539-9370

The case was assigned case number 19-17355-aih to Judge ARTHUR I HARRIS.

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

If you would like to view the bankruptcy petition and other documents filed by the debtor, they are available via the **PACER** system at <https://www.ohnb.uscourts.gov> (registration required) or at the Clerk's Office, United States Bankruptcy Court, Howard M. Metzenbaum U.S. Courthouse, 201 Superior Avenue, Cleveland, OH 44114-1235 between the hours of 9:00 AM - 4:00 PM.

8. Inquiries

[REDACTED]

[REDACTED]

Jan 13, 2020 NATIONAL FUNDING, INC.

Credit Report

[REDACTED]

KERR | Jul 28, 2020

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